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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/620,821 07/21/00 CLOONAN

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EXAMINER

WM02/0925

JOSEPH P. KRAUSE
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
222 N. LASALLE STREET
CHICAGO IL 60601

HARPER, K

ART UNIT

PAPER NUMBER

2664
DATE MAILED:

09/25/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/620,821

Applicant(s)

CLOONAN

Examiner

Kevin C. Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-7, 11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 6, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Response to Arguments

1. Applicant's arguments with respect to claims 4-7 and 11-12 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 7 is objected to because it contains two sentences (periods). Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 6 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Kilkki (US 6,081,505).

3. Regarding claim 6, Kilkki discloses a method for providing data packet congestion control (abstract, last five lines). The method comprises the steps of determining the particular service flow associated with a data packet and the flow rate of the particular service flow (Figure 1, step 44 and Figure 2), quantizing the data packet flow rate into at least one priority level (Figure 3, step 76), detecting the instantaneous buffer circuit depth (Figure 1, step 50), and processing the packet (Figure 1, steps 52 and 54) in response to the data packet flow rate, the

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data packet priority, and the current buffer circuit depth. The number of priority levels, as determined by the current service flow rate, may be four (col. 12, lines 45-46).

4. Regarding claim 11, Kilkki discloses a method for adjusting the data rate of packets transiting a network (abstract, lines 12-15). The method comprises determining a maximum data rate allowed through a network (col. 13, Table 1, NBR), monitoring the data rate of the data packets (Table 1, MBR), determining a predetermined priority of a data packet (Table 1, PL), and determining a remaining memory in a memory circuit (Figure 4, steps 81 and 82; col. 15, lines 29-34). If the data packet has a low priority and the data rate is greater than the maximum data rate, then the packet is dropped (Figure 4, steps 83 and 84). If the data packet has a high priority and the data rate is greater than the maximum data rate, then the packet is processed (steps, 83 and 85-87).

5. Regarding claim 12, if data packets receive a priority of 0 due to the measured data rate (col. 13, lines 40-42), then the packet will always be processed (Figure 4, step 83; col. 15, lines 34-38; note: when the allowable priority level is 0, a data cell having a priority of 0 will always be processed since " $0 > 0$ " in step 83 will be evaluated as false).

Allowable Subject Matter

6. Claims 4-5 are allowed.

7. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Skirmont (US 6,252,848; Figure 7) discloses discarding packets based on data flow rates and buffer fullness. Douceur et al. (US 6,247,061; Figure 4) discloses scheduling packet transmissions using conformance determinations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 703-305-0139. The examiner can normally be reached weekdays, except Wednesday, from 8:00 AM to 6:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached at 703-305-4366. The fax phone number for Technology Center (TC) 2600 is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office for TC 2600 at 703-306-0377.

Kevin C. Harper



September 24, 2001



HUY D. VU
PRIMARY EXAMINER